

## Message Text

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ORIGIN EB-07

INFO OCT-01 EA-09 ISO-00 OES-06 COME-00 /023 R

DRAFTED BY EB/IFD/BP:HJWINTER/WBLOCKWOOD:BT

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P 022232Z NOV 76  
FM SECSTATE WASHDC  
TO AMEMBASSY TOKYO PRIORITY

UNCLAS STATE 269896

E.O. 11652: N/A

TAGS: EIND, JA

SUBJECT: PACIFIC INDUSTRIAL PROPERTY ASSOCIATION (PIPA)

INTERNATIONAL CONGRESS, NOVEMBER 9 - 11

REFS: (A) TOKYO 15968; (B) STATE 262358

1. ACCEPTANCE BY COMMERCIAL COUNSELOR MELLOR TO ATTEND NOVEMBER 9 OPENING OF PIPA INTERNATIONAL CONGRESS IN PLACE OF AMBASSADOR HODGSON HAS BEEN RELAYED TO PRESIDENT OF THE U.S. GROUP, HAROLD LEVINE, BY EB/IFD/BP. MELLOR'S AVAILABILITY TO SPEAK AT OPENING IS APPRECIATED.

2. DEPARTMENT HAS REVIEWED MURTHA ARTICLE IN JULY 7 ISSUE OF "COMMERCE TODAY" ON INVENTION AND INNOVATION, AND THE ROLE OF THE U.S. PATENT OFFICE IN THIS PROCESS. WE UNDERSTAND REASONS FOR EMBASSY PROPOSAL TO USE THIS ARTICLE AS BASIS FOR PRESENTATION TO PIPA. HOWEVER, PIPA GROUP IS GENERALLY COMPRISED OF HIGHLY QUALIFIED PATENT COUNSELS OF HIGH TECHNOLOGY COMPANIES AND EXPERTS IN THE PATENT FIELD. AS SUCH, THEY ARE EXTREMELY WELL-VERSED ON THE SUBJECTS OF INVENTIVENESS AND THE PATENT OFFICE. IT WOULD BE DIFFICULT UNCLASSIFIED

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TO ENLIGHTEN THE PIPA GROUP ON SUBJECT OF INVENTIVENESS AND ITS IMPORTANCE. FURTHER, THE PRESIDENT OF THE U.S. PIPA GROUP, HAROLD LEVINE, WILL READ SOME REMARKS IN THE NAME OF

THE U.S. COMMISSIONER OF PATENTS, C. MARSHALL DANN, WHICH WILL DEAL WITH ACTIVITIES OF THE PATENT OFFICE. THEREFORE, WE SUGGEST THAT MELLOR FOCUS ON AREAS WHERE KNOWLEDGE OF THE GROUP MAY NOT BE SO EXTENSIVE, SUCH AS:

-- (1) U.S./JAPAN TRADE RELATIONS. SHORT BRIEFING DRAWING ON EMBASSY'S PERCEPTION OF OVERALL TRADE PICTURE, WITH SOME COMMENTARY ON ISSUES SUCH AS PUBLIC CONCERN ABOUT LARGE JAPANESE BILATERAL DEFICIT AND REASONS FOR IT, PROBLEMS IN GETTING U.S. PRODUCTS INTO JAPAN, AND PROBLEMS ARISING FROM PROTECTIONIST MOVES IN US AGAINST JAPANESE EXPORTS (E.G., STEEL, COLOR TVs). MELLOR WELL-QUALIFIED ON THESE TOPICS AND CAN DRAW ON PREVIOUS COMMUNICATIONS.

-- (2) A SECOND AREA THAT COULD BE OF INTEREST TO PIPA GROUP IS TRANSFER OF TECHNOLOGY. THERE FOLLOWS SOME MATERIAL WHICH MAY ASSIST, IF MELLOR WISHES TO TALK ON THIS SUBJECT:

-- (A) EXTRACTS FROM RECENT DEPARTMENTAL PAPER WHICH GIVES BACKGROUND ON SUBJECT AND U.S. POLICY: THE UNITED STATES HAS A FIRM POLITICAL COMMITMENT TO THE MAINTENANCE OF A SOUND DIALOGUE WITH THE DEVELOPING COUNTRIES, THE OBJECTIVE OF WHICH IS THE ACHIEVEMENT OF CONSTRUCTIVE AND MUTUALLY BENEFICIAL ECONOMIC COOPERATION. WE HAVE AS A MATTER OF POLICY DETERMINED THAT IT SERVES U.S. NATIONAL INTERESTS TO PROMOTE THE ECONOMIC AND SOCIAL WELFARE OF THESE COUNTRIES; WE ARE PLEDGED TO ASSIST IN THEIR ECONOMIC DEVELOPMENT AND GROWTH. OUR INTEREST INCLUDES THE MAINTENANCE OF A SOUND TRADE AND INVESTMENT CLIMATE, ACCESS TO (SCARCE) RESOURCES, LABOR AND MARKETS, AND THE STRENGTHENING OF TECHNOLOGICAL RESOURCES IN LESS DEVELOPED COUNTRIES.

TECHNOLOGY HAS BECOME A KEY ISSUE IN THE CURRENT DEBATE. INDEED, ALL NATIONS ARE IN FULL AGREEMENT THAT TECHNOLOGY RANKS WITH THE TRADITIONAL FACTORS WHICH DETERMINE THE RATE OF ECONOMIC GROWTH (LAND, LABOR AND CAPITAL). FOR UNCLASSIFIED

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COUNTRIES WHICH LACK THE CAPABILITY TO DEVELOP TECHNOLOGY INGENUOUSLY, DEPENDENCE ON IMPORTED TECHNOLOGY BECOMES AN ECONOMIC FACT OF LIFE. CONSEQUENTLY, THE INTERNATIONAL TRANSFER OF TECHNOLOGY IS INCREASINGLY A SUBJECT OF GREAT IMPORTANCE TO ALL COUNTRIES, AND MOST ESPECIALLY TO DEVELOPING COUNTRIES.

(QUOTATION FROM REPORT OF JAPANESE COMMISSIONER ON AMERICAN INVENTIVENESS IN MURTHA ARTICLE, PAGE 10, COULD BE INSERTED AT THIS POINT.)

THE MOST RECENT EXPRESSION OF OUR "COMPREHENSIVE APPROACH" TO TECHNOLOGY TRANSFER WAS IN SECRETARY KISSINGER'S UNCTAD

IV SPEECH WHICH ELABORATED AN INTERNATIONAL EFFORT COMPRISED OF FIVE BASIC ELEMENTS: RESEARCH AND DEVELOPMENT, TRAINING, INFORMATION, INVESTMENT POLICIES AND A REVIEW OF NATIONAL GOALS AND RESPONSIBILITIES FOR THE UN CONFERENCE ON SCIENCE AND TECHNOLOGY (1979).

BEFORE PROCEEDING WITH A DISCUSSION OF U.S. POLICIES AND PROGRAMS, IT SERVES AS A USEFUL BACKDROP TO BRIEFLY IDENTIFY LDC CONCERNS OR DEMANDS IN THIS FIELD. THE OBVIOUS BEARS REPETITION, THAT IS THE VAST MAJORITY OF MODERN INDUSTRIAL AND AGRICULTURAL TECHNOLOGY IS PROPRIETARY AND RESIDES IN THE DEVELOPED WORLD. THE LDCS, PHILOSOPHICALLY CONSIDER THAT TECHNOLOGY IS IN THE CATEGORY OF "COMMON HERITAGE" AND THAT ALL COUNTRIES HAVE RIGHT OF ACCESS TO THE WORLD'S TECHNOLOGY IN ORDER TO IMPROVE THEIR STANDARDS OF LIVING. THEY BELIEVE THERE IS A HIGHLY UNEVEN DISTRIBUTION OF THE FRUITS OF TECHNOLOGY, THAT TECHNOLOGICAL PROGRESS IS EVER LEAVING THEM FURTHER BEHIND IN THE ECONOMIC RACE.

WE HEAR A CRESCENDO OF DEMANDS FROM THE LDCS THAT THE ONLY REAL SOLUTION IS TO IMPOSE A LARGE MEASURE OF GOVERNMENTAL CONTROL OVER THE TERMS AND CONDITIONS OF THE INTERNATIONAL TRANSFER OF TECHNOLOGY. EXAMPLES INCLUDE MEASURES TO:

-- . DETERMINE FAIR AND REASONABLE TERMS, INCLUDING  
-- PRICE, ON TECHNOLOGY TRANSFER TRANSACTIONS.

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-- . INSURE THAT TECHNOLOGY IS APPROPRIATE TO  
-- INDIVIDUAL LDC NEEDS.

-- . PROVIDE FOR REGISTRATION OF TECHNOLOGY TRANSFER  
-- CONTRACTS BY GOVERNMENTS TO INSURE THAT THEIR  
-- TERMS CONTRIBUTE TO SOCIAL AND ECONOMIC DEVELOP-  
-- MENT GOALS.

-- . PROVIDE FOR THE SPEEDIEST POSSIBLE LOCAL OWNERSHIP  
-- OF THE FACTORS (CAPITAL, KNOW-HOW, TRAINED PER-  
-- SONNEL) OF TECHNOLOGY.

-- . ESTABLISH NATIONAL AND INTERGOVERNMENTAL MEASURES  
-- TO ABOLISH RESTRICTIONS IMPOSED BY THE SUPPLIERS  
-- OF TECHNOLOGY. THIS WOULD INCLUDE ELIMINATION OF  
-- THE PERCEIVED MONOPOLY EXERCISED BY MNCS THROUGH  
-- RESTRICTIONS SUCH AS EXPORT CONTROLS, TIED SALES  
-- OR PURCHASES, GRANTBACKS, AS WELL AS RESTRICTIONS  
-- CONTAINED IN PATENT AND TRADEMARK RIGHTS.

-- . REDUCTION IN THE DURATION OF PATENT PROTECTION  
-- AND CEILINGS ON ROYALTY RATES.

TWO THEMES RUN THROUGH MOST OF THE POINTS LDCS MAKE. THE FIRST IS THE NECESSITY OF GOVERNMENT INTERVENTION IN ORDER TO PROMOTE THE TECHNOLOGY TRANSFER PROCESS. A CODE OF CONDUCT AND REVISIONS IN THE INDUSTRIAL PROPERTY SYSTEM FALL IN THIS CATEGORY. AS REGARDS THE LATTER SUBJECT, AS YOU KNOW, THERE IS A PROPOSED REVISION OF THE PARIS INDUSTRIAL PROPERTY CONVENTION TO MEET THE PARTICULAR NEEDS OF LDCS. THE LDCS HAVE ADVANCED PROPOSALS REGARDING, AMONG OTHER THINGS, THE BASIC "NATIONAL TREATMENT" PROVISIONS OF THAT CONVENTION, PREFERENTIAL TREATMENT ON A NON-RECIPROCAL BASIS, AND COMPULSORY LICENSING.

THE SECOND IS THE INSTITUTIONALIZATION OF TECHNOLOGY TRANSFER. THIS REQUIRES ESTABLISHMENT OF NEW CENTERS, ORGANIZATIONS, INSTITUTES AND WHAT-HAVE-YOU, ALL FORMALLY DEDICATED TO THE TRANSFER AND DEVELOPMENT OF TECHNOLOGY.

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AT TIMES IT CERTAINLY APPEARS THAT THE TWO GROUPS OF COUNTRIES ARE TALKING PAST ONE ANOTHER ON THIS SUBJECT. THE DEVELOPING NATIONS CONTINUALLY DEMAND CHANGES IN THE SYSTEM, GOVERNMENTAL CONTROL OVER THE MARKET PLACE AND THE MNC, AND A FAIRLY MASSIVE TRANSFER OF RESOURCES. DEVELOPED COUNTRIES TALK IN TERMS OF PRESERVATION WITH IMPROVEMENTS OF THE EXISTING SYSTEM, A SOUND INVESTMENT CLIMATE, A MINIMUM OF GOVERNMENTAL CONTROLS AND A HOST OF MEASURES TO DO SOMETHING ABOUT THE INSTITUTIONS AND POLICIES OF THE LDCS. RECENT U.S. POLICY HAS BEEN TO STRIKE A BALANCE BETWEEN THESE POSITIONS. PERHAPS THE BEST WAY TO ILLUSTRATE THIS POLICY IS TO TALK IN TERMS OF THE BASIC FACTORS WHICH COMPRIZE THE INTERNATIONAL TRANSFER OF TECHNOLOGY. THESE ARE CAPITAL, KNOW-HOW AND TRAINED PERSONNEL.

THE PRIMARY VEHICLE FOR THE PROVISION OF THIS COMPLEX BUNDLE OF FACTORS IS THE PRIVATE SECTOR, OR THE MNC, ALTHOUGH MNCS AS A WHOLE DO ONLY 20 PERCENT OF THEIR BUSINESS WITH LDCS. IT IS FUNDAMENTAL TO U.S. POLICY THAT THIS CONTINUE TO BE THE CASE. IN ADDITION TO THE POLITICAL UNDERPINNINGS OF THIS POLICY, IT IS OUR EXPERIENCE AND CONVICTION THAT A PROFIT MOTIVATED PRIVATE SECTOR IS BY FAR THE MOST EFFICIENT AND EFFECTIVE MEANS FOR THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY. THE PRIMARY MECHANISMS FOR THE TRANSFER OF THESE FACTORS ARE DIRECT EQUITY INVESTMENT, JOINT VENTURES, LICENSING AND MANAGEMENT, AND KNOW-HOW CONTRACTS. PART OF OUR TASK AND POLICY IS TO CONVINCE THE LDCS THAT ADEQUATE AND PREDICTABLE INCENTIVES MUST EXIST IF ACCESS TO PRIVATE CAPITAL, KNOW-HOW AND TRAINING

IS TO FLOURISH, AND THAT GOVERNMENT INTERVENTION IS LESS IMPORTANT. AT THE SAME TIME, WE ARE FULLY COMMITTED AND

WILL CONTINUE TO ACTIVELY PARTICIPATE IN THE WORK ON A CODE OF CONDUCT FOR TRANSFER OF TECHNOLOGY AS WELL AS PROPOSALS FOR REVISION OF THE SO-CALLED INTERNATIONAL INDUSTRIAL PROPERTY SYSTEM. WE BELIEVE AND HAVE AMPLY DEMONSTRATED THROUGH OUR PROPOSALS THAT THERE IS MERIT TO GUIDELINES FOR GOVERNMENTS AND ENTERPRISES WHICH SET FORTH TERMS AND CONDITIONS WHICH MAXIMIZE THE BENEFITS OF TECHNOLOGY TRANSFER. IT SHOULD BE ADDED THAT THIS IS AN EXTREMELY DIFFICULT AREA FOR US TO BE FORTHCOMING IN WITH UNCLASSIFIED

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REGARD TO THE LDC DEMANDS.

PARTIALLY ON ACCOUNT OF THIS LIMITATION, U.S. POLICY HAS EVOLVED TO AN EXAMINATION OF POSSIBLE ALTERNATIVE WAYS OF PROVIDING FOR CAPITAL, KNOW-HOW AND TRAINED PERSONNEL. SUCH ALTERNATIVES ARE MORE SIMILAR TO THE SECOND THREAD RUNNING THROUGH LDC DEMANDS -- THAT FOR INSTITUTIONS. WE DO NOT SEEK TO SUBSTITUTE FOR PRIVATE INVESTMENT-ORIENTED TRANSFER OF TECHNOLOGY, BUT RATHER TO SUPPLEMENT IT. OUR OBJECTIVE IS TO DIFFUSE THE DEMANDS FOR CODES OF CONDUCT AND TO ESTABLISH MEANINGFUL INTERNATIONAL PROGRAMS TO ASSIST THE LDCS. A WIDE VARIETY OF MEASURES, INCLUDING SEVERAL U.S. PROPOSALS, ARE DESIGNED TO MAKE CAPITAL PUBLICLY AVAILABLE (IBRD, IMF, REGIONAL DEVELOPMENT BANKS, INTERNATIONAL RESOURCES BANK, INTERNATIONAL INVESTMENT TRUST, ETC.). SECONDLY, WE HAVE SUPPORTED NUMEROUS MEASURES WHICH WOULD DIRECTLY OR INDIRECTLY PROVIDE FOR KNOW-HOW AND TRAINED PERSONNEL. THESE INCLUDE A NETWORK OF R. AND D. INSTITUTIONS, EXPANDED TRAINING PROGRAMS, AND INFORMATION FACILITIES.

THE POINT HERE IS THAT WE ARE SHAPING A BALANCED POLICY ON TWO FRONTS: ONE, TO MAXIMIZE THE BENEFITS OF PRIVATE TECHNOLOGY TRANSFER, AND SECONDLY, A SERIES OF INITIATIVES AND PROGRAMS TO PROVIDE FOR TECHNOLOGICAL CAPACITIES AND RESOURCES FROM OTHER SOURCES.

-- (B) EXTRACTS FROM A RECENT PAPER FOR A TALK WITH U.S. CHAMBERS OF COMMERCE IN THE PACIFIC REGION, WHICH COULD BE INTEGRATED INTO PRESENTATION ON 'TRANSFER OF TECHNOLOGY", FOLLOW:

TRANSFER OF TECHNOLOGY HAS BECOME A SUBJECT OF PRIME IMPORTANCE IN OUR RELATIONS WITH THE DEVELOPING COUNTRIES. IT CROPS UP IN VIRTUALLY EVERY FORUM WHERE NORTH/SOUTH ISSUES ARE DISCUSSED (UNGA, UNCTAD, UNIDO, ESCAP, CIEC, ETC.).

IN ASIA AS IN MOST OF THE DEVELOPING WORLD, THE U.S. IS FACING INCREASED DEMANDS FOR TECHNOLOGY TRANSFER. AT THE SAME TIME IT IS BECOMING INCREASINGLY DIFFICULT TO MAIN-

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TAIN EFFECTIVE INDUSTRIAL PROPERTY PROTECTION.

MANY OF THE COUNTRIES OF THE REGION DO NOT SUBSCRIBE TO THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, WHICH IS, OF COURSE, THE CORNERSTONE OF INDUSTRIAL PROPERTY PROTECTION WORLDWIDE. ITS BASIC PROVISION IS "NATIONAL TREATMENT" WHEREBY MEMBER STATES GRANT EACH OTHERS' CITIZENS THE SAME PROTECTION THEY GRANT THEIR OWN.

IN SOME COUNTRIES, THERE SIMPLY ARE NO PATENT OR TRADEMARK SYSTEMS (E.G., BURMA AND THAILAND). IN THOSE COUNTRIES WHERE PROTECTION IS AVAILABLE, THERE HAVE BEEN MOVEMENTS TO WEAKEN IT IN RECENT YEARS. FOR EXAMPLE, THE NEW PATENT LAW IN THE PHILIPPINES MAY RESTRICT PROTECTION AND ROYALTY RATES. INDIA HAS A MAXIMUM ROYALTY RATE THAT IT WILL PAY. KOREA AND TAIWAN ARE FORCING ADOPTION OF LOCAL MARKS TO BE USED ALONG SIDE AND EVENTUALLY REPLACE FOREIGN MARKS. KOREA WILL NOT RENEW A TRADEMARK UNLESS THERE IS EVIDENCE THAT SOME TECHNOLOGY HAS BEEN TRANSFERRED. MANY COUNTRIES HAVE RESTRICTIONS ON LICENSING REQUIRING OFFICIAL APPROVALS BEFORE LICENSING ARRANGEMENTS CAN BE MADE.

THERE ARE COMPLAINTS BY BUSINESS ABOUT THE ADVERSE CONSEQUENCES OF THESE MEASURES. THESE COMPLAINTS FOCUS ON SUCH MATTERS AS SEVERE LIMITATIONS ON ROYALTY RATES AND REMITTANCES, A WITHERING OF INDUSTRIAL PROPERTY PROTECTION AND CUMBERSOME ADMINISTRATIVE PROCEDURES. WE CERTAINLY SHARE BUSINESS CONCERN ABOUT THESE DEVELOPMENTS. ON SEVERAL OCCASIONS, WE HAVE EXPRESSED OBJECTIONS TO ASIAN GOVERNMENTS WHEN SOME VIOLATION OF EITHER NATIONAL LAW OR INTERNATIONAL PRACTICES OR CONVENTIONS OCCUR. THE TOUGHEST PROPOSITION IS DEALING WITH THE LAWS THEMSELVES. THE U.S., AT THE MULTILATERAL LEVEL, HAS ATTEMPTED TO "EDUCATE" IN THE SENSE OF DEMONSTRATING THE ADVERSE ECONOMIC CONSEQUENCES AND THE DISINCENTIVE FACTOR WHICH SOME OF THESE LAWS ARE OCCASIONING. AT THE BILATERAL LEVEL WE HAVE, IN A FEW INSTANCES, HELD DISCUSSIONS WITH LDC GOVERNMENTS AIMED AT AMELIORATING THE EFFECTS OF THESE LAWS. IT IS IMPORTANT THAT WE MAINTAIN A CLOSE COMMUNICATIONS WITH THE PRIVATE SECTOR ON THESE MATTERS, AND PARTICULARLY THAT ADVERSE BUSINESS CONSEQUENCES OF NEW LAWS BE MADE KNOWN TO GOVERNMENT

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MENTS.

3. THE UNITED STATES GOVERNMENT CLEARLY REGARDS THE PACIFIC INDUSTRIAL PROPERTY ASSOCIATION AS A VERY IMPORTANT CHANNEL OF COMMUNICATION WITH THE PRIVATE SECTOR ON

INDUSTRIAL PROPERTY MATTERS. IN VIEW OF THE NUMBER AND  
IMPORTANCE OF THE JAPANESE FIRMS THAT ARE MEMBERS OF PIPA,  
I AM SURE THAT THE JAPANESE GOVERNMENT REGARDS PIPA IN THE  
SAME WAY. ROBINSON

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TECHNICAL ASSISTANCE, ECONOMIC DEVELOPMENT, FOREIGN TRADE, SPEECHES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 02 NOV 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE269896  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** EB/IFD/BP:HJWINTER/WBLOCKWOOD:BT  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** n/a  
**Film Number:** D760409-0224  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t197611100/baaaaeqpc.tel  
**Line Count:** 332  
**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Office:** ORIGIN EB  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 7  
**Previous Channel Indicators:**  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** oatisa0  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 22 JUL 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <22 JUL 2004 by schwenja>; APPROVED <13 AUG 2004 by oatisa0>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** PACIFIC INDUSTRIAL PROPERTY ASSOCIATION (PIPA)  
**TAGS:** EIND, JA, PACIFIC IND PROPERTY ASSOC INTL, PIPA, (MELLOR, JOHN E)  
**To:** TOKYO  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006